

SB CIVIL WRIT PETITION NO.6064/1992
Sohan Lal Gupta v/s State of Rajasthan & ors.

11.7.2006

HON'BLE SHRI JUSTICE P.S. ASOPA

Shri Virendra Lodha, for the petitioner.
Shri Manoj Pareek, for the respondent No. 2 & 3.
Mr. Harshvardhan Nandwana, Addl. GA, for the State.

By the instant writ petition, the petitioner has challenged the order of dismissal from service dated 1.6.1992.

Briefly stated the relevant facts of the case are that the petitioner while working as Pharmacist (Salesman) in Bharatpur Wholesale Sahkari Upbhokta Bhandar Limited was served with a charge sheet on 17.12.1991. Charge No.1 consists of three parts and all the three parts relate to misappropriation of the amount during the year 1991, 1991-92 and September, 1991 while working in Medical Shop Emergency Branch / Medical Shop 1 (B). The said amount of misappropriation is totaling to Rs.43,522.57/-. Charge No.2 is relating to not depositing the medicine after expiry and breakage in store, which has resulted in dis-obedience of the orders of the authorities. The petitioner has submitted reply and denied the charge and has further submitted that he has deposited

part of the amount. On finding the reply unsatisfactory, Shri Mahaveer Prasad Jain was appointed as enquiry officer, who has conducted the enquiry and finally submitted the enquiry report holding the petitioner guilty of the charges.

On receipt of said report, explanation of petitioner was sought which was found unsatisfactory and the disciplinary authority has agreed with the finding of the enquiry officer and further concluded that total misappropriation is of Rs.43,522.57/-. In addition to aforesaid, orders of the superior authority have been disobeyed, therefore, both charges are of serious nature and ultimately, punishment of dismissal was imposed vide order dated 1.6.1992.

It is stated in the writ petition that the petitioner has applied for change of the enquiry officer by leveling allegation of malafide for which he has submitted the application to the disciplinary authority. The petitioner has further stated that he has not been granted reasonable opportunity to defend. It has also been stated in the writ petition that the petitioner has not been allowed the defence nominee.

Counsel for the respondents have filed reply to the writ petition. In reply to the writ petition, the

respondents have not admitted the allegations against the enquiry officer. As regard, appointment of defence nominee, they admitted the fact that the application was given on 21.3.1992, but the petitioner has not made any oral request for appointment of defence counsel in the enquiry. They have further stated in reply that several opportunities have been granted to the petitioner by the enquiry officer, but the same have not been availed by him.

The submission of counsel for the petitioner is that the entire enquiry vitiated on account of malafide intention of the enquiry officer, who neither allowed him the defence nominee nor granted him reasonable opportunity and on the contrary demanded Rs.5,000/- to drop the proceedings. Further submission of counsel for the petitioner is that non-appointment of defence nominee has seriously prejudiced his defence which has resulted in denial of reasonable opportunity, therefore, the impugned dismissal order is liable to be set aside.

The submission of counsel for the respondents is that although the petitioner has submitted an application for appointment of defence nominee, but no such oral request was made by him before enquiry officer which is further evident from the fact that

the petitioner has thereafter participated in the enquiry and acquiesced over the matter by not submitting any further application or pressing the earlier application. Counsel for the respondents has further submitted that the finding of guilty of charges is based on the documentary evidence further supported by oral evidence, therefore, finding of guilty recorded by the enquiry officer is wholly justified. The explanation of the petitioner was also considered, but the same was found unsatisfactory. He has also submitted that in view of above, requirement of principle of natural justice has been fulfilled and the dismissal order is fully justified.

I have considered the rival submissions of the parties.

I am of the view that there is nothing on record to show that enquiry officer has acted malafidely. There is also no material to substantiate the fact that bribe of Rs.5,000/- was demanded by the enquiry officer at this residence, therefore, conduct of the enquiry officer could not said to be malafide. As regard submission of the petitioner of not allowing appointment of defence nominee, the petitioner has not stated in his writ petition that the said application was pressed by him either making oral request or

objecting the further proceedings by filing second application. In my view, the petitioner who is acquiesced over the matter, now cannot be permitted to raise the said issue. Further perusal of the record of writ petition would reveal that sufficient opportunity was granted to the petitioner, but sometime he availed and sometime, he did not avail. If the petitioner has not availed the opportunity then the respondents cannot be faulted. Since the procedure / norms for conducting the enquiry as well as principles of natural justice have been followed, therefore, the petitioner has been rightly held guilty of the charges. Since the charges are of serious nature, therefore, punishment is also proportionate to the gravity of the charges. In the last, I would also like to comment on the issue regarding competency of the General Manager, who has passed the appropriate punishment order. Mr.Lodha, counsel for the petitioner has fairly conceded that as per Bye Law No.13 (8) of the society, General Manager is competent to pass the dismissal order.

In view of above, writ petition fails and herewith dismissed.

(P.S. ASOPA) J.

Ummed/-